noted that there are two principal types of oil and gas leases: that type which in terms grants the exclusive right to explore for oil; and secondly, that which grants the land for the sole purpose of searching for oil. The Illinois cases, with which the principal case is in accord, hold that under either type of cases the lessee holds corporeal property. *Daughetee* v. *Ohio Oil Co.*, 263 Ill. 518; *Guffey* v. *Smith*, 237 U. S. 101. See also *Woodland Oil Co.* v. *Crawford*, 55 Ohio St. 161; *Harris* v. *Ohio Oil Co.*, 57 Ohio St. 118. Kansas, like Illinois, makes no distinction in the types of leases, but contrary to Illinois, holds that, regardless of the type of lease, incorporeal property is created. *Beardsley* v. *Kan. Nat. Gas Co.*, 78 Kan. 571; *Huston* v. *Cox*, 103 Kan. 73. Pennsylvania and California hold that a lease, which in terms grants the land, vests the lessee with a corporeal estate. *Barnsdall* v. *Bradford Gas Co.*, 225 Pa. 338; *Chandler* v. *Hart*, 161 Cal. 405. But the rule is settled in these two states that if the lease purports to grant only the exclusive right to search for oil, then the lessee has an incorporeal right. *Funk* v. *Haldeman*, 53 Pa. 229; *Brookshire Oil Co.* v. *Casmalia Oil Co.*, 156 Cal. 211. The courts, in determining the nature of the interest created by an oil and gas lease, should consider the substance rather than the form of the lease. Whatever the technical form, the underlying purpose of the lease is to give the lessee the right to take oil and gas. All other rights are mere incidents of this primary, underlying right. The right to take oil is analagous to the right to take gravel, herbage, seaweed, etc., from the land of another—commonly termed a *profit a prendre*. If this analysis is correct, the Kansas courts have reached the sound conclusion in holding that an oil lease, regardless of its form, creates in the lessee incorporeal property. For a more complete review of the cases upon the nature of the lessee's interest under an oil and gas lease, see the article on *The Law of Oil and Gas*, by James A. Veasey, 18 MICH. L. REV. 749.

RESTRICTIONS—GENERAL BUILDING PLAN—UNIFORM STYLE OF HOUSES AS NOTICE.—The owner of a tract of land laid the same out in lots in pursuance to a community scheme and sold them under certain restrictions and the representation that the whole tract was subject to them. One of these was to the effect that any dwelling erected should be used as a private home for one family only. Later he sold a lot to the defendant under a deed restricting the latter to the erection of a building to appear from the outside as a one-family house, to be used by not more than two families. The defendant began to erect a two-family type of house. Seven of the restricted lot owners sued to enjoin him from so doing. *Held*, the nature of the building restriction imposed on him and the uniformity of the houses in the restricted area were circumstances sufficient to put a reasonable man on inquiry, and hence to charge the defendant with notice of the general plan. *Shoyer et al.* v. *Mermelstein*, (Ct. of Chancery, N. J., 1921), 114 Atl. 788.

It is well settled that an owner of land may, by contract with the purchasers of successive parcels, affect the remaining parcels with an equity requiring them to be occupied in conformity to a general plan, provided that each subsequent purchaser is charged with notice of the plan, and regardless

of the fact that his legal title is not similarly restricted. See 2 TIFFANY, REAL PROPERTY, [2nd Ed.], Sec. 400; *Tallmadge* v. *East River Bank,* 26 N. Y. 105; *Knapp* v. *Hall,* 20 N. Y. Supp. 42; *Lowrance* v. *Woods,* 54 Tex. Civ. App. 233; *Chapin* v. *Dougherty,* 165 Ill. App. 426; *Allen* v. *Detroit,* 167 Mich. 464. Naturally, the courts cannot define precisely what circumstances will be adequate to put a purchaser upon inquiry as to the existence of a general plan. In *Tallmadge* v. *East River Bank,* supra, the court said, "The uniformity of the position of all the houses on St. Mark's Place was probably sufficient alone to put the defendant on inquiry," and in the principal case the court said, "That (the uniform style of the houses) alone was, in my judgment, enough to put the defendant to inquiry." In both of these cases, however, there were other facts indicating the existence of a general plan. In *Bradley* v. *Walker,* 138 N. Y. 291, where the buildings in the restricted area were generally set back eight feet from the street, though parts of some of them encroached upon the space to be left open, the court said, regarding their uniform position, "But he (the defendant) was not bound to know from that circumstance that there was any binding agreement in reference to the open space." It is doubtful whether mere uniformity in style or in position should be sufficient to charge a party with notice of a general building plan. A better rule would seem to be that the uniformity of the houses in a restricted area is but one of the circumstances to be considered in determining whether a reasonable man would have been put upon inquiry. Uniformity in style or position might be so distinct as to have this effect.

SALES—FORM OF ACTION ON BUYER'S REFUSAL OF TITLE.—Plaintiff sued on an account for goods sold. At the trial defendant was permitted to introduce evidence that he had countermanded his order for the goods before plaintiff had shipped them. This was objected to by plaintiff on the ground that by the contract the order could not be countermanded and the evidence was therefore immaterial. *Held,* the evidence was properly admitted. *Martin & Lanier Paint Co.* v. *Daniels,* (Ga. App., 1921), 108 S. E. 246.

The court's reason for admitting the evidence was that "while the order for the goods sold provided that it was not subject to countermand, yet if the defendant did in fact countermand it before the goods were shipped, while this would not relieve him from liability, the plaintiff could not maintain an action upon an open account for goods sold and delivered, but would have to sue for a breach of contract." The court cites no authority, but the facts and decision are on all fours with *Acme Food Co.* v. *Older,* 64 W. Va. 255. It is one more decision in disregard of the persistent dictum originated in *Dustan* v. *McAndrew,* 44 N. Y. 72, to the effect that even though the buyer refuses the title the seller may, nevertheless, sue for the price as distinct from damages for breach of the contract. For a full discussion of the subject, see *The Seller's Action for the Price,* 17 MICH. L. REV. 283.

STATUTORY CONSTRUCTION—READING EXCEPTION INTO PENAL STATUTE.—The defendant, who was a motorcycle police officer, while pursuing a speed-law violator, ran into the plaintiff. The defendant was exceeding the speed